weigh even more with persons of their class, it precluded them from recovering the money they had paid. The second point that impressed me, and it also impressed the learned President, was that although the appellant admitted the receipt of the sums of money mentioned in the charges and though he also admitted the receipt of the other sums of money in question and the supply of provisions without payment (whether or not there was ever an intention to pay is irrelevant) he offered no explanation as to why none of these payments were made and none of these provisions were supplied except at a time when the shopkeeper concerned was enjoying the benefit of the provision contract. Strictly speaking there was of course no onus lying upon him to explain that concatenation of circumstances, but if he admitted its existence and yet was content to allow it to remain unexplained he cannot complain that the inference was drawn that there was a connection between the payments to him and the provision contract which went materially to support the evidence of the shopkeepers as to the nature of the relations between him and them.

In all the circumstances of the case I have no hesitation in dismissing the appeal. I would only add an expression of appreciation of the great care taken by the learned President in dealing with the case in his grounds of judgment.

Appeal dismissed.

TAN KHIAM WAH v. CHONG FONG YEEN AND ANOR.

[Orig. Civ. Juris. (Taylor, J.) June 19, 1950]

[Kuala Lumpur — Civil Suit No. 201 of 1949]

Debtor and Creditor (Occupation Period) Ordinance, 1948 — Principles — Section 6 — Debt not expressed in occupation currency — Debt incurred after 12th August, 1945.

In this case the plaintiff claims repayment of a loan made to the defendant. It was alleged that late in August 1945 the plaintiff received the sum of $200,000 in Japanese currency and handed the defendant a promissory note for $10,000 Straits payable on the 1st of March, 1946, and also deposited a land title as collateral security. The plaintiff claimed repayment of the sum of $10,000. The defendant pleaded (a) that the loan was usurious and should be reopened under the Usurious Loans Enactment (b) that the debt was invalidated by the proviso to section 6 of the Debtor and Creditor (Occupation Period) Ordinance, 1948.

Held, (1) that on the facts the parties were on equal terms and the transaction was not usurious; (2) that an occupation debt incurred after 12th August, 1945, if expressed to be payable otherwise than in occupation currency, is not invalidated by the Debtor and Creditor (Occupation Period) Ordinance, 1948.

Principles of the Debtor and Creditor (Occupation Period) Ordinance, 1948, stated.

An occupation debt incurred after 12th August, 1945, if expressed to be payable otherwise than in occupation currency, is not invalidated.

CIVIL SUIT.

T. Rajendra for the plaintiff.

B. J. P. Joaquim and *M. N. Cumarasami* for the defendants.

Cur. Adv. Vult.

Taylor, J. : — This case concerns another "Occupation debt".

The plaintiff is the manager of a dispensary; the first defendant is a miner and the second is his wife, who joined in the transaction but as she has the same interest I will treat them for the purposes of this judgment as one person.

The background of the suit is this. For nearly four years Malaya struggled with an inconvertible or "printing press" currency, depending entirely on the credit of the Japanese Government which necessarily fluctuated with their fortune in the war. They had a financial policy which might be described as "controlled inflation". It worked for a time but as the war progressed and their spectacular early successes were seen not to be leading to ultimate victory they gradually lost control and the inflation became fantastic — a situation comparable to that of Germany in 1919.

The position just before the Japanese surrendered was this; their credit had gone and their currency was almost valueless but it was still legal tender.

A shopkeeper who had obtained an advance from his bank in July, 1942 when the inflation was slight, and thereby acquired a stock of goods on which he had traded for three years, could sell the remnants in July, 1945 and pay off his overdraft. In terms of goods it meant this — a man who had bought a suit of clothes on credit in 1942, and worn them out, could sell a set of second-hand buttons in 1945 for sufficient cash to settle the tailor's bill.

On liberation the Malayan Governments were faced with the problem of adjusting the results of that period of progressive inflation. They took the three obvious steps of re-establishing a currency based on sterling, proclaiming a moratorium on all occupation dealings and devising a statutory scale of rates, analogous to rates of exchange, fixing the value in post-war money, which the Japanese currency is deemed to have had at various dates.

The Debtor and Creditor (Occupation Period) Ordinance is designed primarily to provide a means of adjusting two types of transaction namely, those in

which a pre-war debt was paid or partly paid during the occupation, and those in which an occupation debt was wholly or partly outstanding at the date of Liberation. It deals with those cases where the parties had been compelled by force of circumstances to make and receive payments in depreciating currency. It expressly excludes from its scope two types of dealings namely, those where the parties had expressly agreed that the deal was not to be completed in Japanese currency (section 6) and those where, after Liberation, the parties had agreed on a settlement (section 13). The principle is clear; the Ordinance provides a means of re-valuing those payments which could not be re-valued otherwise, but where the parties have made their own re-valuation, their agreement stands.

The facts of the case are these. Late in August, 1945, when the Japanese surrender was imminent and they had completely lost control of the inflation, the defendant wanted to borrow some Japanese money, partly for a transaction with a Japanese official with a view to recovering possession of the defendant's house, and partly for other purposes. At that time exchange dealings in Japanese currency were not uncommon. There was still some pre-war Malayan money in the hands of the public, though not in active circulation. In view of the ever-increasing inflation most people wanted to convert their Japanese notes into any other form of security, but some few thought that the Allies would eventually compel the Japanese to redeem their notes, if only as a form of reparation, and were therefore actually buying Japanese notes, speculatively, at very low rates. The operating Banks could not undertake any such business and consequently there could be no open or commercial rate of exchange; all such transactions had to be arranged "on the street", each one being a matter of individual bargaining.

The defendant approached the Secretary of his Bank who, after some discussion, undertook to try to arrange an advance to the defendant of $200,000 Jap against a promise to repay $10,000, Straits Currency, six months later.

There is a conflict of evidence as to whether the defendant or the banker suggested the rate of 20 to 1 but I do not think this point is of any importance. Obviously the defendant was in need of funds but he was not pressed to the point of day-to-day difficulty. He was an experienced man dealing with a business friend well able to judge the situation and, whoever first named the figure, the plaintiff voluntarily agreed to it.

The banker could not himself provide the cash required but he arranged for the plaintiff to do so. The plaintiff then had only about $150,000 Jap in hand but he had saved $2,000 in pre-war money. He sold this to a third party at 25 to 1, realising 50,000 Jap. He then handed $200,000 to the defendant who gave him a promissory note for $10,000 Straits, payable on 1st March, 1946 and also deposited a land title as collateral security.

The Moratorium having at last expired the plaintiff now sues for $10,000. The defendant says that under the Debtor and Creditor (Occupation Period) Ordinance the note is valueless and alternatively that the transaction should be revised under the Usurious Loans Enactment.

This transaction could be regarded as a loan but there was never any question of interest and in my view it is more correctly viewed as a forward contract in foreign exchange. The defendant offered to sell $10,000, Straits, for delivery in March, at $20 Jap for each dollar. The defendant had no Straits money at the time but he had mining property and every prospect of being able to fulfil his contract when it matured.

Although the transaction may not have been a loan in the strict sense of the word it was a loan within the wide meaning of the Usurious Loans Enactment, but was it usurious? As I have said, the parties were not on unequal terms and the defendant had independent financial advice.

The plaintiff used $2,000 of pre-war cash to provide one-quarter of the amount. On this footing the whole amount was worth about $80,000. That is not an accurate measure of the value because there was no regular market. The plaintiff's policy was to convert his Japanese currency into some form of British security. If he had not had the $150,000 Jap, or if he had had the full $200,000 Jap in hand he would not have made the smaller deal. He temporarily converted that $2,000 Malayan against himself in order to convert the $150,000 Jap in his favour. The defendant was one of the few people who wanted to acquire Jap currency at that time; he had a special purpose in view. If the price asked was too high he need not have bought. No one but himself could judge whether the probable advantage of the house was worth the price.

As the parties were advised by a banker they may fairly be taken to have expected that there would be a moratorium and other financial legislation. When they fixed the date of repayment six months ahead,

the plaintiff was taking an obvious risk of the Moratorium lasting longer than that, (though no one could have expected it to last for four years). He also took the risk of the transaction being adversely affected by the occupation currency legislation, which risk has materialised to this extent — that the defendant claims in this action that the note is wholly avoided.

The land is vacant and was estimated to be worth $5,000 before the war; the note was therefore only half secured. In all these circumstances I can see nothing unconscionable or unfair. I am clearly of opinion that the transaction was not usurious and I decline to re-open it.

The only remaining question is whether, as the defendant contends, the bargain is invalidated by law.

Section 6 of the Debtor and Creditor (Occupation Period) Ordinance, omitting words not relevant to this issue, reads :—

> ". . . . . Any occupation debt, which was still unpaid in 1949, shall, unless such debt was expressly made payable otherwise than in occupation currency, be re-valued, in accordance with the scale in the Schedule, ... as at the date when payment was demanded or 12th August, 1945, whichever was the earlier . . . . . .
> "Provided that:—
> nothing shall be payable in respect of any such debt which was incurred after 12th August, 1945."

I have left out the words relating to a time essence contract because I find that this is not such a contract.

The main argument for the defendant is this. His counsel says that the words "such debt" in the second line refer to the words "any occupation debt". This is correct; they have no other possible antecedent. Then he says that the words "such debt" in the proviso also refer to the same antecedent. As a matter of strict grammar I think this also is correct when the section is condensed as above but when it is read with all the inapplicable clauses included the grammatical argument is less clear. Long though they are, the section and the two provisos together make only one sentence but it is a compound sentence as well as a very complex one. When it is read as a whole I doubt whether the proviso does, even as a matter of strict grammar, relate to the first part of the section. The words "nothing shall be payable" in the proviso seem to me to refer to, and qualify, the words "shall be payable" in the body of the section.

The main argument is implicity founded on the assumption that the rules of English grammar are so clear and rigid that a given sentence can have only one grammatical meaning. I think this is the fallacy. The part of English grammar which deals with the construction of sentences is more in the nature of an art than of an exact science. There may be ellipsis; and elliptical expressions are to be read "according to the understanding". This applies especially to relative constructions, where the sense may require a different antecedent from the strictly grammatical antecedent. As a matter of mere grammar, and quite apart from the canons of legal construction, an error in applying a relative to an antecedent makes the sentence only ambiguous not ungrammatical.

As a matter of legal construction ambiguities are resolved according to the context.

A shorter and, I think, a correct way of putting it is that the clause "unless such debt was payable in other currency" governs all subsequent parts of the section.

In my opinion the defendant's construction of the sentence is not the only one which can be supported as a matter of grammar. Assuming, in his favour, that he is grammatically right he has shewn only that the sentence is ambiguous — not that it is capable only of the meaning for which he contends. The tenor and principle of the Ordinance as a whole and, more especially, the sense of this section, require that the proviso be limited to re-valued debts.

There is a subordinate argument based on the proviso. It is a canon that a law must be construed so as to give effect, if possible, to every part. Counsel for the defendant said that unless the second limb of the first proviso bears the meaning for which he contends, it has no meaning or effect whatever. This is not correct. The body of the section does not say ". . . . shall be re-valued according to the schedule", it says ". . . . shall be re-valued according to the scale in the Schedule". The whole Schedule is therefore not incorporated by reference in section 6; only the scale is so incorporated.

Suppose that on 15th August, 1945, a man borrowed $100,000 Jap on a pre-note expressed in these words only : — "I promise to pay bearer one hundred thousand dollars". Apply section 6 to that transaction. It is not "otherwise expressed" so it must be re-valued. It must be re-valued according to the scale. The scale stops at August 12th. Without the second limb of the proviso there would be a deadlock. There would be no measure for re-valuing and no one could say whether it was over or under $100, new money. The proviso serves two purposes. It enacts, first, that if re-valuation, at whatever date, (say $100 Jap in 1943) yields under $100, the re-valued amount shall not be recoverable; this is an ordinary *de minimis* provision. Secondly, it enacts that after 12th August, 1945 all

re-valuations vanish; this might be called an extra-ordinary *de minimis* provision. But both provisions deal with re-valuation and neither touches a transaction which is exempted from re-valuation by the body of the section.

It may be true that, so far as my illustration goes, clause 2(b) of the schedule would be unnecessary but it may well have an application in other circumstances. In any event the words "such debt" in clause 2(b) plainly refer to a debt which "falls to be re-valued", in clause 2(a); the clause therefore supports my construction of section 6. The second limb of the proviso has an effective meaning which accords with the tenor of the section and with the general scheme of the Ordinance. The subordinate argument therefore breaks down.

The defendant concedes that the result of his main argument is arbitrary but he says the whole Ordinance is arbitrary; I do not accept this. The Ordinance is, in principle, entirely reasonable and practical. It aims at adjustment on a scale falling progressively in proportion to the actual inflation. Whether the scale fits the facts accurately at any given point is a matter of opinion but error in fact is quite different from arbitrariness. The defendant's argument means this — that if on 12th August, 1945 a man borrowed $10,000 Jap and promised to pay $1,000, new money, on March 1st, the contract is binding for the full amount (unless usurious) but if on the following day he borrowed another $10,000, or even $1,000,000 Jap, then whether he promised to pay $10,000, or $1,000 or only $100, the contract is wholly avoided — regardless of the rate and of every other circumstance. There is no possible reason for such an amazing and sudden change. Nothing remarkable occurred on that particular day. The truth is that the terminal date is not arbitrary. The scale has monthly rests for nearly three years; then it has daily rests for a fortnight; and it stops when it passes the ratio of 1,000 to 1. The legislature treated this as the practical limit of re-valuation.

The defendant therefore fails on both issues and judgment must be given for the plaintiff for $10,000 and costs. The land may be sold in enforcement of the lien and the plaintiff has leave to apply to the Registrar for directions for sale but if notice of appeal is given the advertisements should not be published until the appeal has been concluded.

Judgment for the plaintiff.

ARUNASALAM CHETTIAR
v.
NG TAI NYONG AND ANOR.

[Court of Appeal (Willan, C.J., Taylor and Spenser-Wilkinson, JJ.) July 6, 1950]

[F.M. — Civil Appeal No. 8 of 1950]

Debtor and Creditor (Occupation Period) Ordinance, 1948 — Procedure by Originating Summons — Defence of defendant — Appeal.

This was an appeal from an order made in open Court upon an Originating Summons taken out in Malacca under section 11 of the Debtor and Creditor (Occupation Period) Ordinance, 1948. The application was for a declaration that a reconveyance of certain mortgaged property was void as against the mortgagor and for an order that the security be re-instated, on the ground that the repayment of the capital debt in January and February, 1944, in occupation currency must be revalued, thus leaving the debt partly undischarged. The application was supported by an affidavit of the attorney of the plaintiff. The defendants did not enter an appearance to the Summons but they appeared in person at the hearing. They stated that they contested the application on the grounds that the debt had been repaid partly in Straits dollars and that the repayment had been demanded by the plaintiff. The learned Judge thereupon adjourned the Originating Summons into open Court. A further affidavit was then filed by the plaintiff's attorney in which inter alia he said "I observe that no demand for payment either in writing or verbally was made by my principal or his then agent." At the trial the defendants, who were asked to begin, gave evidence that payment had been demanded. At the conclusion of the defendants' case Counsel for the plaintiff stated that his case rested on the affidavits and submitted that the defendants had failed to prove either that a demand had been made or that payment had been made within three months of the alleged demand. The learned Judge held that a demand had been made and that payment had been made within three months of the demand and he therefore gave judgment for the defendants. On appeal it was argued that the judgment ought to be reversed as the procedure was wrong in that the plaintiff had no fair opportunity of meeting the case against him and that a decision had been reached upon an issue which was not on the record.

Held, (1) that the procedure followed in this case was that laid down by the Debtor and Creditor (Occupation Period) Ordinance, 1948, and even if it appears to be inappropriate or inadequate, it is not the duty of the Court to modify it; (2) that as there was nothing on the record to show that the plaintiff did not know the case he had to meet or that he had no fair opportunity of meeting it, there was no ground for the application for a rehearing and therefore the appeal must be dismissed.

Cases referred to:—

(1) *Blay v. Pollard and Morris* (1930) 1 K.B. 628.

(2) *Sanders v. Sanders* 19 Ch. D. 373.

CIVIL APPEAL.

F. G. Charlesworth for the appellant.

A. J. Bostock-Hill for the respondents.

The facts sufficiently appear from the judgment of Spenser-Wilkinson, J.